

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,	)	
	)	
	)	
	)	
vs.	)	Case No. 4:21-cr-40039-SMY
	)	
MINGQING XIAO,	)	
	)	
Defendant.	)	

**MOTION FOR LEAVE TO FILE A REPLY BRIEF  
IN SUPPORT OF DEFENDANT’S POST-TRIAL MOTION FOR  
JUDGMENT OF ACQUITTAL OR, IN THE ALTERNATIVE, FOR A NEW TRIAL**

Comes now Defendant Mingqing Xiao (“Dr. Xiao” or “Defendant”), by his attorneys, and, out of an abundance of caution, requests leave to file a succinct reply brief in support of his Post-Trial Motion for Judgment of Acquittal or, in the Alternative, for a New Trial (“Motion for Judgment of Acquittal”). In support of his motion, Defendant states as follows:

1. The Local Rules provide that, for “all post-trial motions” filed in this District, “[r]epley briefs, if any, shall be filed within 14 days of the service of a response.” *See* United States District Court for the Southern District of Illinois Local Rules 7.1(c). Local Rule 7.1(c) also states that reply briefs “are not favored and should be filed only in exceptional circumstances.” *Id.*

2. This Court’s Case Management Procedures provide that parties “wishing to file a reply brief shall, within three (3) days of service, file a motion for leave.” Hon. Staci. M. Yandle, Case Management Procedures at 4 (Jan. 2022). Because this instruction appears under the heading of Motion Practice for “Civil Cases,” counsel understands that rule to be inapplicable in this criminal action. Nevertheless, Dr. Xiao now seeks leave, out of an abundance of caution, to file a

succinct reply brief within 14 days of the service of the government's response to Dr. Xiao's Motion for Judgment of Acquittal. If leave to file a reply is not required, Dr. Xiao intends to file a brief reply by July 15, 2022, consistent with Local Rule 7.1(c).

3. For the reasons set forth below, this is a rare case where filing a reply brief is appropriate and will assist the Court in resolving Dr. Xiao's pending Motion for Judgment of Acquittal.

4. Trial in this case commenced on April 25, 2022. After the government closed its case-in-chief, this Court granted in part Dr. Xiao's motion for a judgment of acquittal, and ordered the acquittal and dismissal of the two wire fraud counts (Counts 1 and 2). Later, the jury acquitted Dr. Xiao of the false statement count (Count 3). At the same time, however, the jury convicted Dr. Xiao of the four remaining tax-related charges (Counts 4 through 7). On June 3, 2022, Dr. Xiao filed his Motion for Judgment of Acquittal (ECF No. 184). The government filed its opposition to Dr. Xiao's motion on July 1, 2022 (ECF No. 189).

5. As previously noted, this case and Dr. Xiao's pending Motion for Judgment of Acquittal, involve questions related to the complexity of the tax laws at issue during Dr. Xiao's trial, which require a substantial explanation of the underlying statutes, regulations, and case law relevant to Counts 4 through 7. The pending motion also covers an sizable evidentiary record. Among other things, the government's opposition cited a number of cases that it suggests are relevant to an analysis of that evidentiary record, particularly several *civil* FBAR cases, which Dr. Xiao has had no chance to rebut or distinguish. Moreover, the government's opposition claimed that Dr. Xiao waived his argument regarding the FBAR regulation and the text of the underlying statute in the Bank Secrecy Act. A succinct reply brief would be Dr. Xiao's only opportunity to

address that contention, and would provide this Court will crucial argument allowing for the efficient resolution of Dr. Xiao's Motion for Judgment of Acquittal.

6. For these reasons, Defense counsel respectfully submits that leave to file a reply brief will permit Dr. Xiao to adequately address these issues and will assist the Court in resolving the pending motion.<sup>1</sup>

WHEREFORE Defendant MINGQING XIAO respectfully requests this Court grant this motion and permit Dr. Xiao to file a succinct reply brief in further support of his Post-Trial Motion for Judgment of Acquittal or, in the Alternative, for a New Trial.

Dated: July 5, 2022

Respectfully submitted,

By: Patrick F. Linehan

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<sup>1</sup> Counsel for Dr. Xiao contacted the government on the evening of July 5, 2022 regarding this motion. Dr. Xiao was unable to obtain the government's position before filing this motion.

**CERTIFICATE OF SERVICE**

I hereby certify that on July 5, 2022 I electronically filed the foregoing motion with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record, including:

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